



Adam E. Collyer  
77 Water Street, Suite 2100  
New York, New York 10005  
Adam.Collyer@lewisbrisbois.com  
Direct: 646.783.1723

Dong Phuong V. Nguyen  
77 Water Street, Suite 2100  
New York, New York 10005  
Phuong.Nguyen@lewisbrisbois.com  
Direct: 646.666.7698

November 27, 2023

File No. 37986.7346

**VIA ECF**

The Honorable Lois Bloom  
United States Magistrate Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
New York, New York 11201

Re: *Kauser v. MHF 5th Ave., LLC, et al.*  
Case No.: 1:22-cv-05121 (RPK)(LB)

Dear Judge Bloom:

We represent Defendants in the above-referenced matter. We write in response to Plaintiff's Motion to Compel Defendants' responses to Plaintiff's First Set of Interrogatories and First Request for Production of Documents ("Motion"), filed on November 16, 2023. (Doc. No. 34). The Court should deny Plaintiff's request as premature because Plaintiff failed to meet and confer in good faith pursuant to Rule 37(a)(1) of the Federal Rules of Civil Procedure, Local Rule 37.3(a) of the Eastern District of New York, and Section 5.A. of the Court's Individual Practices. Moreover, Defendants have complied and continue to comply with their discovery obligations by producing responses and document productions.

On November 16, 2023, Defendants emailed Plaintiff's counsel to request an extension of time to December 4 to respond to Plaintiff's discovery requests on the basis that Defendants' contact person who is responsible for compiling the documents was away from the office and required additional time to gather the requested records. That same day, Plaintiff's counsel contacted Defendants' counsel and advised that Plaintiff's counsel would not consent to an extension. Before the parties were able to continue with the meet and confer, Plaintiff's counsel advised that he had another call and abruptly ended the

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call. Plaintiffs then filed the instant Motion that afternoon without any further discussions with Defendants.

Had Plaintiffs' counsel remained on the call or actually met and conferred with Defendants in good faith in compliance with federal, local, and the Court's rules, Defendants would have been able to inform Plaintiffs as to the grounds for Defendants' request for more time to respond and propose an alternative date for production. Defendants have been working to compile and produce the requested documents and discovery responses. Their efforts have been delayed due to personnel availability issues and because the company is currently switching between two data storage systems, which has made retrieval of personnel files and records extremely difficult. Defendants are cognizant of the pending close to fact discovery on December 15 and have been working to compile and produce supplemental records to Plaintiffs as quickly as possible. Instead, Plaintiffs rushed to file this application in hopes of obtaining some advantage of putting this issue before the Court.

Plaintiffs' request that Defendants be precluded from using any outstanding discovery in this litigation is misplaced and inappropriate. Defendants have been diligent in their efforts to comply with their discovery obligations. Prior to this Motion, Defendants produced complete time and pay records for all four Plaintiffs. Since then, Defendants also served responses and objections, and made a supplemental document production that is responsive to Plaintiffs' discovery requests. Defendants also anticipate making at least one additional supplemental production as they are able to retrieve the relevant, responsive documents from the system.

Defendants are engaging in discovery. There is no basis for Plaintiffs' request and the Court should deny Plaintiffs' request and Motion as unsupported and premature.

We thank the Court for its attention to this matter.

Respectfully,

/s/ Adam E. Collyer

Adam E. Collyer of  
LEWIS BRISBOIS BISGAARD &  
SMITH LLP

cc: **All Counsel of Record**